

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
WASHINGTON STATE DEPARTMENT OF )  
SOCIAL AND HEALTH SERVICES )  
(WESTERN STATE HOSPITAL), )

Appellant, )

vs. )

PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )

Respondent. )

PCHB No. 96

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

This is the appeal of a \$100.00 civil penalty for an alleged violation of visual emission standards as contained in Section 9.03 of respondent Agency's Regulation I.

The matter came before the Pollution Control Hearings Board (Walt Woodward, hearing officer) as a continuation of an informal conference in a hearing conducted in the Tacoma law offices of Burkey, Marsico, Rovai & McGoffin at 1:30 p.m., May 15, 1972. Members of the Pollution Control Hearings Board in attendance were James T. Sheehy and Walt

1 Woodward. Appellant was represented by John H. Bright, Assistant  
2 Attorney General. Respondent was represented by its counsel, Keith D.  
3 McGoffin. Transcript of the proceedings was prepared by Shirley W.  
4 Marshall, a Seattle court reporter.

5 After opposing counsel agreed that a hoped-for stipulated agreement  
6 was not possible to achieve, the proceedings assumed the status of a  
7 formal hearing. Witnesses were sworn and testified. Exhibits were  
8 admitted.

9 On the basis of testimony heard and exhibits examined, the  
10 Pollution Control Hearings Board makes these

11 FINDINGS OF FACT

12 I.

13 On February 2, 1972, from the boiler stacks of the Western State  
14 Hospital, an institution operated by appellant Department at Fort  
15 Steilacoom, Pierce County, there was a smoke emission for at least 13  
16 consecutive minutes of No. 3 and No. 4 densities on the Ringelmann Chart.

17 II.

18 Section 9.03 of respondent Agency's Regulation I makes it unlawful  
19 for any person to cause an air contaminant emission longer than three  
20 minutes in any one hour of a density more than No. 2 on the Ringelmann  
21 Chart.

22 III.

23 Western State Hospital generally uses natural gas fuel, but employs  
24 coal on a standby basis when its contract supply of natural gas is  
25 curtailed. It was during one of these curtailment periods, when coal  
26 was being used as the fuel, that the February 2, 1972 stack emission

27 FINDINGS OF FACT,

CONCLUSIONS AND ORDER

1 occurred.

2 IV.

3 Coal furnished Western State Hospital does not meet its contract  
4 specifications either in uniform size or moisture content. The coal  
5 contract calls for size 1-5/8"x3/32", but coal delivered under this  
6 contract to Western State Hospital, in fact, ranges in size from dust to  
7 2 1/2". The coal contract calls for moisture content not to exceed 13  
8 percent, but the coal has been tested in excess of 17 percent moisture.

9 V.

10 Coal not of uniform size and of high moisture content can cause  
11 serious air contaminant stack emissions due to improper combustion.

12 From these findings, the Pollution Control Hearings Board comes  
13 to these

14 CONCLUSIONS

15 I.

16 On February 2, 1972, at Western State Hospital, appellant Department  
17 was in violation of Section 9.03 of respondent Agency's Regulation I.

18 II.

19 Respondent Agency, charged with enforcing smoke emission regulations  
20 necessary to the public health, welfare and safety in Pierce County is  
21 interested chiefly in this matter in attaining compliance by Western  
22 State Hospital with respondent Agency's Regulation. It assessed the  
23 civil penalty under appeal herein as a means of achieving compliance and  
24 not with the objective, as a taxpayer-supported arm of government, in  
25 collecting a monetary penalty from another taxpayer-supported arm of  
26 government.

27 FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

1 III.

2 Appellant Department, closely related to public health, welfare  
3 and safety, by virtue of its functions, likewise is anxious to be in  
4 compliance with smoke emission regulations necessary to public health,  
5 welfare and safety. The size and high moisture content of the coal  
6 used at Western State Hospital are obviously the cause of smoke emission  
7 violations, but appellant Department does not control the purchase of  
8 its fuels; this is done by another department of state government.

9 Therefore, the Pollution Control Hearings Board issues this

10 ORDER

11 The respondent Agency's Notice of Violation No. 5102 is sustained  
12 as a reasonable and proper action. Respondent Agency's assessment of a  
13 \$100.00 civil penalty in connection therewith, likewise is sustained,  
14 provided, however, that respondent Agency shall cancel same upon  
15 receiving assurance that corrective action has been taken to prevent  
16 recurrent violations.

17 ADDENDA


18 The Pollution Control Hearings Board urges appellant Department to  
19 use these Proposed Findings of Fact, Conclusions and Order to impress  
20 upon the responsible department of state government that Western State  
21 Hospital and other state institutions should be supplied with coal of  
22 a size and quality that will prevent smoke emission violations.

23 As urgently as it knows how, the Pollution Control Hearings Board  
24 wishes to remind all affected governmental agencies that, they above  
25 all others, should be leaders, not violators, in this state's efforts  
26 to control pollution.


27 FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

1 DONE at Olympia, Washington this 5th day of July, 1972.

2 POLLUTION CONTROL HEARINGS BOARD

3   
4 MATTHEW W. HILL, Chairman

5   
6 WALT WOODWARD, Member

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8 JAMES T. SHEEHY, Member

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26 FINDINGS OF FACT,  
27 CONCLUSIONS AND ORDER